U.S. Customs Service

General Notice

FEE FOR ELECTRONIC FINGERPRINTING

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document announces an increase in the fee for fingerprinting at airports at which there is a computerized fingerprint identification system for the use of conducting background checks on airline and airport employees who require unescorted access to Federal Inspection Service areas of an airport. The fee will be raised to $43.50.

EFFECTIVE DATE: January 29, 2001.

FOR FURTHER INFORMATION CONTACT: Linda Slattery, U.S. Customs Service, Office of Field Operations, Passenger Programs, Room 5.4D, 1300 Pennsylvania Avenue, NW, Washington, DC, 20029, Tel. (202) 927-4434.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On July 11, 2000, Customs published a document in the **Federal Register** (65 FR 42766) regarding the implementation, at certain airports, of a computerized fingerprint identification system (Integrated Automated Fingerprint Inspection System (IAFIS)) for the use of conducting background checks on airline and airport employees who require unescorted access to Federal Inspection Service areas of an airport. The IAFIS employs an automated fingerprint reading device that electronically transmits the fingerprint data directly to the Federal Bureau of Investigation (FBI) where a criminal history background search can be conducted within 24 hours, instead of the four to seven weeks it normally takes to manually process fingerprint cards. Where implemented, this computerized fingerprinting system will be used in lieu of collecting fingerprints on cards.

Customs announced in the July 11 **Federal Register** notice that the fee for this computerized fingerprinting would be $39.00. The fee is based on Customs recovering the FBI user-fee that is charged to Customs for conducting fingerprint checks and Customs administra-

tive processing costs associated with the collection of fingerprints, which include the compensation and/or expenses of Customs officers performing the fingerprint service and 15% of that amount to cover Customs administrative overhead costs.

Primarily because the fee charged Customs by the FBI has been increased, Customs is announcing that it must increase the fee for fingerprinting at airports utilizing the IAFIS. The fee will be raised to $43.50 to offset the fee being charged Customs by the Federal Bureau of Investigation.

Dated: January 22, 2001.

CHARLES W. WINWOOD,
Acting Commissioner.

[Published in the **Federal Register**, January 29, 2001 (66 FR 8147)]

U.S. Customs Service

January 24, 2001

Department of the Treasury
Office of the Commissioner of Customs
Washington, D.C.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

U.S. Customs Service

General Notices

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT REGARDING NAFTA ELIGIBILITY OF "BACKFLEX COVER & BELT CLIP"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of the modification of ruling letter and revocation of treatment relating to the "Backflex Cover & Belt Clip" as it relates to the status of this product under the North American Free Trade Agreement (NAFTA).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling letter relating to the eligibility of the "Backflex Cover & Belt Clip" under the Harmonized Tariff Schedule of the United States (HTSUS), and revoking any treatment previously accorded by the Customs Service to substantially identical merchandise. Notice of the proposed modification was published in the CUSTOMS BULLETIN of November 22, 2000, Vol. 34, No. 47. No comments were received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after April 9, 2001.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textile Branch, at (202) 927-2380.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts, which emerge from the law, are **"informed compliance"** and **"shared responsibility."** These con-

cepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. section 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

In New York Ruling (NY) E88017, Customs ruled that the merchandise did not qualify for preferential treatment under the NAFTA because the materials used in the production of the goods would not undergo the change in tariff classification required by General Note 12(t)/63, HTSUSA. This ruling letter is set forth as "Attachment A" to this document. Since the issuance of this ruling, Customs has reviewed the NAFTA eligibility of this merchandise and has determined that the cited ruling is in error. We have determined that this item was properly classified under subheading 6307.90.9989, HTSUS. However, the merchandise does qualify for preferential treatment under the NAFTA because General Note 12(t), Chapter Rule 1 to Chapter 63, states that "For the purposes of determining origin of a good of this chapter, the rule applicable to that good shall only apply to the component that determines tariff classification of the good…". In the case of the subject merchandise, "Backflex Cover & Belt Clip", it is the fabric which forms the textile pouch which determined that the product should be classified under a textile provision, subheading 6307.90.9989, HTSUS. Inasmuch as the fabric is wholly formed in the United States, it is our decision that the subject good is a NAFTA originating good under General Note 12(b), HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NY E88017, dated October 15, 1999, and any other ruling not specifically identified, to reflect the proper NAFTA status of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter HQ 964313 (*see* "Attachment" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical merchandise.

As stated in the proposed notice, this modification will cover any rulings on this issue which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.* ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)),

Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Dated: January 19, 2001.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

January 19, 2001
CLA-2 RR:CR:TE 964313 ASM
Category: Classification
Tariff No. 6307.90.9989

S. GARY KILLEEN
#207-5558-208th St.
Langley, B.C. V3A 2K3
Canada

Re: Modification of NY E88017: NAFTA eligibility of "Backflex Cover & Belt Clip.

DEAR MR. KILLEEN:

This is in regard to New York Ruling (NY) E88017 issued to you on October 15, 1999, which involved the classification of the "Backflex Cover & Belt Clip" under the Harmonized Tariff Schedule of the United States Annotated and the status of this product under the North American Free Trade Agreement (NAFTA). A sample was submitted to this office for examination. We have reviewed this ruling and determined that the decision regarding NAFTA eligibility is incorrect. This ruling modifies NY E88017 by providing a correct determination with respect to the good's NAFTA status.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of was published on November 22, 2000, in the CUSTOMS BULLETIN, Volume 34 , Number 47. No comments were received.

Facts:

The subject item is identified as the "Backflex Cover & Belt Clip" and is used for holding flexible magnets against the body for the purpose of relieving pain. The cover is essentially a pocket constructed by sewing together two panels of laminated fabric. The laminated fabric features three-layer construction with nylon knit pile fabric on the outer surface, a core of polyester cellular plastic in the center and a backing fabric of nylon warp knit fabric. This product, which measures approximately 8 inches by 6.5 inches, tapers slightly from bottom to top and has had its edges finished by overlock stitching. A metal clip is attached to the cover by a textile fabric hook fastener (a "Velcro"™ fastener) which engages with the loops of the outer knit pile fabric. The "Velcro"™ fastener is riveted to the metal clip and is supported by a strip of plastic in the form of a rectangular shape. The metal clip is used to fasten the cover to a belt and hold the cover close to the wearer's body to maximize the effect of the magnetic field.

Based on the certificates of origin that you submitted with this request, it appears that the laminated fabric forming the cover and stainless steel belt clip are both wholly manufactured in the United States with a preference criteria of "A". It is not clear from the documentation what foreign components are used in the manufacture of a strip of woven pile fabric glued to a plastic rectangular piece. You indicate that the "Velcro"™ hook fastener attached to the plastic support piece is manufactured in Canada, however, the certificate of origin indicates that this item incorporates foreign components and has been designated a preference criterion of "B". The metal rivets attaching the "Velcro"™ and plastic support to the metal clip are described as "brass eyelets" and certified by the owner of the company to be in compliance with the origin requirements of NAFTA. Finally, you state that the raw yarn for the thread used to sew the panels of fabric together is manufactured in China but is converted, colored and woven in Montreal, Canada, and constitutes less than ¼ of 1 percent of the subject product.

In NY E88017 dated, October 15, 1999, the subject item was classified in subheading 6307.90.9989, HTSUSA, which is dutiable under the general column one rate of 7 percent *ad valorem*. In addition, the ruling determined that the merchandise did not qualify for preferential treatment under the NAFTA because the materials used in the production of the goods will not undergo the change in tariff classification required by General Note 12(t)63, HTSUSA. You disagree with the determination that the article is not eligible for reduced duties under the NAFTA. You claim that the only foreign component used in the manufacture of this item is the sewing thread used to sew the cover together and that this thread should be ignored for the purposes of determining NAFTA eligibility since the thread represents less than 7 percent of the weight of the good and therefore is *de minimis* by application of Section 102.13 of the Customs Regulations.

Issue:

1. What is the proper tariff classification and duty rate for the subject merchandise?
2. Is the subject merchandise eligible for duty free treatment under the NAFTA?

Law and Analysis:

TARIFF CLASSIFICATION

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The EN, although not dispositive, are used to determine the proper interpre-

tation of the HTSUSA by providing a commentary on the scope of each heading of the HTSUSA. *See*, T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The determination of NAFTA eligibility is dependent, in part, on the tariff classification of the item. As such, we must first classify the item under the HTSUSA. The "Backflex Cover & Belt clip" is comprised of two detachable pieces which are constructed of different materials, *i.e.*, textile and metal. The textile pouch, taken separately, would be classifiable in subheading 6307.90.9989, HTSUSA, which is the textile provision for "Other made up articles" and the metal clip would be classifiable in subheading 8308.90.9000, HTSUSA, which provides for articles of base metals such as "Clasps, … hooks." GRI 2(b) governs the classification of goods when there are mixtures and combinations of materials or substances, and when goods consist of two or more materials or substances. In relevant part, GRI 2(b) states that "The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." GRI 3 states:

> (a). The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
>
> (b). Mixtures, composite goods consisting of different materials or made up of different components and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

In this case, the applicable headings, 6307 and 8308, each refer to only part of the materials which make up this product. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b) as if they consisted of the material or component that gives them their essential character. The EN to GRI 3(b) states:

> (VII). In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, insofar as this criterion is applicable.
>
> (VIII). The factor which determines the essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

Explanatory Note (IX), for the General Rule of Interpretation 3(b) provides, in relevant part, that a composite of two separable articles must together form a whole which would not normally be sold in separate parts. In this instance, the textile pouch can be characterized as having a "separable component", *i.e.*, the metal clip used to attach the entire unit to a belt or waistband. Clearly, these components function as a whole in that they are designed to be used together to hold a magnet close to the body of the user. These components would not fulfill their intended function if sold separately.

Recently , there have been several Court decisions on "essential character" for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. *See, Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), affirmed 119 F. 3d 969 (Fed. Cir. 1997); *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), motion for rehearing and reconsideration denied, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging co.,*

v. United States, 19 CIT 868, 890 F. Supp. 1095 (1995). *See also, Pillowtex Corp. v. United States*, F. Supp. 188 (CIT 1997), affirmed CAFC No. 98-1227 (March 16, 1999).

The essential character of this composite good can be determined by comparing each component as it relates to the use of the product. The "Backflex Cover & Belt Clip" is used for holding in place flexible magnet pads. Although the metal clip provides the added feature of allowing the user to secure the product to a belt or waistband, it is the textile pouch, which actually contains the therapeutic magnet. In that sense, the textile pouch provides the essential character because it more directly serves the main goal of the product, *i.e.*, to carry the magnet which provides pain relief to the user. In Headquarter's Ruling (HQ) 957182, dated March 6, 1995, Customs classified a "body pad/back warmer" which was imported without its heating pack, as an "Other made up article" under subheading 6307.90.9989, HTSUSA. This article consisted of a textile pouch with a belt mechanism to secure it to the body. Like the textile pouch in the subject case, the "body pad/back warmer" textile pouch was specifically designed to hold a separate energy element designed to provide relief to the user; it also features a distinct attachment feature (belt mechanism) which is similar to the detachable metal clip of the "Backflex Cover & Belt Clip." In view of these similarities, this ruling serves as precedent in finding that the subject textile pouch is properly classified as "Other made up articles" in heading 6307, HTSUSA.

Based on the foregoing, it is our determination that the "Backflex Cover & Belt Clip" is classified pursuant to GRI 3(b), as "composite goods", under subheading 6307.90.9989, HTSUSA, which is the provision for "Other made up articles including dress patterns: Other: Other: Other, Other: Other." This provision is dutiable under the general column one rate at 7 percent *ad valorem*.

NAFTA ELIGIBILITY

The subject article, "Backflex Cover & Belt Clip", undergoes processing operations in Canada and incorporates materials produced in the United States. Both the United States and Canada are countries provided for under the North American Free Trade Agreement (NAFTA). General Note 12, HTSUSA, incorporates Article 401 of the NAFTA into the HTSUSA. Note 12(a) provides, in pertinent part:

* * *

(ii) Goods that **originate** in the territory of a NAFTA party under subdivision (b) of this note **and that qualify to be marked as goods of Canada** under the terms of the marking rules… and are entered under a subheading for which a rate of duty appears in the "Special" subcolumn followed by the symbol "CA" in parentheses, are eligible for such duty rate… . [Emphasis supplied]

In order to be eligible for the "Special" "CA" rate of duty, the merchandise must be NAFTA originating goods under General Note 12(b), HTSUSA, and qualify to be marked as goods of Canada. Note 12(b) provides in pertinent part,

> For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as "**goods originating in the territory of a NAFTA party**" only if—
>
> (i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or
>
> (ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—
>
> (A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods under-

goes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or,

(B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or

(iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials; or…

* * *

In applying the NAFTA Rules of Origin, it is important to note that the aforementioned rules are not sequential. General Note 12(b)(ii)(A) is used when there are some foreign materials involved in the product. Thus, the subject merchandise qualifies for NAFTA treatment only if the provisions of General Note 12 (b)(ii)(A) are met, that is, if the merchandise is transformed in the territory of Canada so that the non originating materials (foreign thread) undergo a change in tariff classification as described in subdivision (t) or satisfies the rules set forth in subdivisions (r), (s), and (t) of this note.

General Note 12(t), Chapter 63, rule 4, states as follows:

4. A change to heading 6304 through 6310 from any other chapter, **except** from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, **chapters 54** through 55 or headings 5801 through 5802 or 6001 through 6002, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties. (Emphasis supplied)

It is our understanding that the foreign thread used to construct the textile pouch is of synthetic fiber and would thus be classifiable as "sewing thread" at subheading 5401.10.0000, HTSUSA. Inasmuch as the textile pouch is classifiable in subheading 6307.90.9989, HTSUSA, and General Note 12(t), Chapter 63, specifically states that sewing thread of Chapter 54 is excepted by subdivision (t), Chapter 63, Rule 4, it is our determination that the subject thread does not undergo the requisite change in tariff classification.

You have asserted that application of the *de minimis* rule (General Note 12(f)) would qualify the merchandise for NAFTA treatment because the foreign thread constitutes less than seven percent of the total weight of the good. However, the *de minimis* rule is not applicable in this case.

We have already determined that the "Backflex Cover & Belt Clip" is classifiable in a textile provision, subheading 6307.90, HTSUSA. As such, General Note 12(t), Chapter Rule 1 to Chapter 63 is applicable and states:

> For the purposes of determining origin of a good of this chapter, the rule applicable to that good shall only apply to the component that determines tariff classification of the good and such component must satisfy the tariff change requirements set out in the rule for the good.

In HQ 959863, dated October 31, 1996, it was the fabric of a cloth covered hanger, comprised of a wooden hanger, foam padding, and fabric, that caused the article to be classified in a textile provision at subheading, 6307.90, HTSUSA. In determining whether or not the good was NAFTA originating, it was necessary to consider the fact that the fabric had determined the tariff classification (General Note 12(t), Chapter Rule 1 to Chapter 63). This resulted in the good being denied the NAFTA preference because the fabric was foreign.

In applying General Note 12(t), Chapter Rule 1 to Chapter 63, to the instant case, it is the fabric, not the thread of the textile pouch that determines tariff classification of this article under a textile provision, subheading 6307.90.9989, HTSUSA. Thus, in determining whether or not the good is NAFTA originating, it would be the fabric and not the thread that would be subject to a *de minimis*

analysis. However, we do not need to apply the *de minimis* rule because the fabric forming the textile pouch is wholly formed in the United States. As such, the fabric determines origin of the good and based on the foregoing, it is our determination that the subject merchandise is a NAFTA originating good under General Note 12(b), HTSUSA. NY E88017 was incorrect in determining that the merchandise did not qualify for preferential treatment under the NAFTA.

Holding:

NY E88017, dated October 15, 1999, is hereby modified.

The subject merchandise is correctly classified in subheading 6307.90.9989, HTSUSA, which provides for, Other made up articles including dress patterns: Other: Other: Other, Other: Other." There is no textile restraint category.

The product does qualify for the "Special" "CA" duty free treatment under the NAFTA.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent negotiations and changes, we suggest that your client check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an issuance of the U.S. Customs Service, which is updated weekly and is available at the local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) categories, your client should contact the local Customs office prior to importing the merchandise to determine the current status of any import restraints or requirements.

The holding set forth above applies only to the specific factual situation and merchandise identified in the ruling request. This position is clearly set forth in section 19 C.F.R. Sections 177.9(b)(1) and 181.100(a)(2)(i). These sections state that a ruling letter is issued on the assumption that all of the information furnished in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

Should it be subsequently determined that the information furnished is not complete and does not comply with 19 C.F.R. Sections 177.9(b)(1) and 181.100(a)(2)(i), the ruling will be subject to modification or revocation. In the event there is a change in the facts previously furnished, this may affect the determination of country of origin. Accordingly, if there is any change in the facts submitted to Customs, it is recommended that a new ruling request be submitted in accordance with 19 C.F.R. Section 177.2 and/or Section 181.93.

NY E88017 dated October 15, 1999, is hereby modified. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN WESTERN RED CEDAR BOARDS

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of certain Western Red Cedar boards.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, 19 U.S.C. 1625(c), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking one ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain Western Red Cedar boards or "short boards". Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed revocation was published in the CUSTOMS BULLETIN of November 15, 2000, Vol. 34, No. 46. Three comments were received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after April 9, 2001.

FOR FURTHER INFORMATION CONTACT: J. Steven Jarreau, Textiles Branch: (202) 927-1031.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, 19 U.S.C. §1484, the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, col-

lect accurate statistics and determine whether any other applicable legal requirement is met.

In Headquarters (HQ) 082694, dated April 11, 1989, certain Western Red Cedar boards, also referred to as "short boards," were classified under subheading 4418.50.0040, HTSUS, which addressed "Builders' joinery and carpentry of wood, including…shingles and shakes." Customs concluded in HQ 082694 that the Western Red Cedar "short boards" measuring eighteen to twenty-four inches long, with random widths and having a thickness between five-eighths of an inch and one and one-fourth inches, possessed the essential character of complete or finished shingles pursuant to General Rule of Interpretation 2 (a).

It is now Customs position that the Western Red Cedar boards or "short boards" of the dimensions previously addressed are properly classified in subheading 4407.10.0068 which addresses wood sawn or chipped lengthwise of a thickness not exceeding 6 mm, Western Red Cedar. *See also* HQ 085187, *reconsidered in* HQ 964202. The Western Red Cedar boards are material rather than incomplete or unfinished shingles. The boards do not have the essential character of complete or finished shingles. They have not been advanced to a stage in which they are dedicated commercially and practically to the manufacture of complete or finished shingles. HQ 964446 revoking HQ 082694 is set forth as "Attachment " to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking HQ 082694 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 964446. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise.

During the notice and comment period, Customs received three comments. The initial comment addressed countervailing duty issues involving Canadian lumber imports, but was non-responsive to the issue of Customs proposed classification. The second comment disagreed with Customs proposed classification, but did not provide support for the position asserted. The principle focus of the second comment was perceived problems with the United States – Canada Softwood Lumber Agreement. The third comment received supported the position of the Customs Service and offered legal analysis. Customs, subsequent to reviewing the comments, chose to proceed with this Notice of Revocation.

As stated in the Notice of Proposed Revocation, this revocation will cover any rulings on this issue which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously ac-

corded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may
raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Dated: January 15, 2001.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

January 15, 2001
CLA-2 RR:CR:TE 964446 jsj
Category: Classification
Tariff No. 4407.10.0068

MR. KEVIN R. REDL
SECRETARY – TREASURER
ANGLO-AMERICAN CEDAR PRODUCTS LTD.
7160 Beatty Street
Mission, British Columbia
Canada V2V 4M6

Re: Reconsideration of HQ 082694; Western Red Cedar "short boards"; Subheadings 4407.10.0068 and 4418.50.0010; General Rule of Interpretation 2 (a); Unfinished shakes and shingles.

DEAR MR. REDL:

The purpose of this correspondence is to advise you that the United States Customs Service has reconsidered Headquarters Ruling Letter 082694 issued to Anglo-American Cedar Products Ltd. (Anglo-American) on April 11, 1989. The article in issue in HQ 082694 was Western Red Cedar "short boards."

The Customs Service classified Western Red Cedar "short boards" in HQ 082694

in subheading 4418.50.0040[1] of the Harmonized Tariff Schedule of the United States (HTSUS). It is the conclusion of the Customs Service, subsequent to a review of HQ 082694, that the classification of Western Red Cedar "short boards" in subheading 4418.50.0040 was incorrect. The correct subheading is 4407.10.0068, HTSUS.

Pursuant to section 625 (c), Tariff Act of 1930, as amended,19 U.S.C. 1625 (c), notice of the proposed revocation of HQ 082694 was published on November 15, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 46. During the notice and comment period, Customs received three comments. The initial comment addressed countervailing duty issues involving Canadian lumber imports, but was non-responsive to the issue of Customs proposed classification. The second comment disagreed with Customs proposed classification, but did not provide support for the position asserted. The principle focus of the second comment was perceived problems with the United States – Canada Softwood Lumber Agreement. The third comment received supported the position of the Customs Service and offered legal analysis.

The Customs Service, subsequent to reviewing the comments and pursuant to the following analysis, is revoking HQ 082694.

Facts:

The articles in issue, identified as Western Red Cedar "short boards", were described in HQ 082694 as "boards...5/8 to 1-1/4 inches thick, 18 inches or 24 inches in length, and in random widths."

Issue:

Are the articles in issue, identified as Western Red Cedar "short boards", unfinished shakes or shingles pursuant to General Rule of Interpretation 2 (a) ?

Law and Analysis:

The classification of imported merchandise pursuant to the Harmonized Tariff Schedule of the United States is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." GRI 1 further provides that merchandise which can not be classified in accordance with the dictates of GRI 1 should be classified pursuant to the other General Rules of Interpretation in their sequential order.

The principal HTSUS subheadings considered by the Customs Service in rendering this reconsideration were: (1) 4407.10.0068; and (2) 4418.50.0010. Subheading 4407.10.0068 provides:

4407 Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6mm:

4407.10.00 Coniferous

4407.10.0068 Other:
Not treated:
Other:
Western red cedar:
Rough[2].

Subheading 4418.50.0010 provides:

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[1] The statistical suffix has changed since 1989. HTSUS subheading 4418.50.0040 as it appeared in 1989 is currently 4418.50.0010.

[2] The term "rough" is defined in Statistical Note 1 to Chapter 44 HTSUS to include "wood that has been edged, resawn, crosscut or trimmed to smaller sizes." The Note continues that the term "rough" does not include wood that has been dressed or surfaced by planing on one or more edges or faces or has been edge-glued or end-glued."

4418 Builders' joinery and carpentry of wood, including cellular wood panels and assembled parquet panels; shingles and shakes:

4418.50.00 Shingles and shakes

4418.50.0010 Shingles:
Of western red cedar.

It is the conclusion of the Customs Service that the Western Red Cedar "short boards" in issue are properly classified pursuant to GRI 1. The "short boards" literally satisfy the dictates of heading 4407 because they are "[w]ood sawn or chipped lengthwise …of a thickness exceeding 6 mm."

Heading 4407 was drafted to be a broad provision for the classification of material. The Explanatory Notes (EN) of the Harmonized Commodity Description and Coding System lend support to this proposition. The Explanatory Notes represent the official interpretation of the HTSUS at the international level. Although the EN's are not law in the United States and the Customs Service is not, therefore, legally obligated to follow them, they are valued as an interpretative aid. *See* T.D. 89–80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

The breadth of heading 4407 is evidenced from a reading of EN 44.07. The Explanatory Notes to Chapter 44 of the HTSUS provide that heading 4407 encompasses, "with few exceptions…all wood and timber, of any length but of a thickness exceeding 6mm, sawn or chipped along the general direction of the grain or cut by slicing or peeling." The EN further states that "[s]uch wood and timber includes *sawn* beams, planks, flitches, *boards*, laths, etc." (Emphasis added.) Explanatory Note 44.07.

General Rule of Interpretation 2 (a) provides that any reference in a HTSUS heading to an article "shall be taken to include a reference to that article incomplete or unfinished." GRI 2 (a) requires, however, that the incomplete or unfinished article have the "essential character" of the complete or finished article.

The General Rules of Interpretation do not define the phrase "essential character", however, its meaning may be understood from an examination of the Explanatory Notes to GRI 2(a). The EN's to GRI 2 (a) draw a distinction between a "blank" which possesses the essential character of an article and a "semi-manufacture[d]" item that does not have the essential character of an article.

A "blank," as defined in the EN, is an article "not ready for direct use, having the approximate shape or outline of the finished article or part." The EN continues stating that a "blank" is an article "which can only be used, other than in exceptional cases, for completion into the finished article or part." A plastic bottle preform is offered in the EN as an example of a blank. Bottle preforms of plastic are "intermediate products having tubular shape, with one closed end and one open end threaded to secure a screw type closure, the portion below the threaded end being intended to be expanded to a desired size and shape."

"Semi-manufactures" are items that do not yet have the essential shape or character of the finished articles. Examples of semi-manufactures set forth in the EN's are: "bars, discs, tubes, etc." Semi-manufactures are specifically not regarded as "blanks."

A review of the description of the Western Red Cedar boards or "short boards," in the condition in which they will be imported, reveals semi-manufactured items rather than blanks. The boards do not have the essential character of shakes or shingles. The adjective "short," it should be noted, is an industry term that simply refers to lengths of sawn timber, generally less than six feet long.

A shake, as described by EN 44.18, is "wood split by hand or machine from a bolt or block. Its face reveals the natural texture of the wood resulting from the splitting process. Shakes are sometimes sawn lengthwise through their thickness to obtain two shakes, each then having a split face and a sawn back." The Complete Dictionary of Wood defines "shakes" as "[h]and riven ½-in. shingles, longer than normal, and often staggered for special effect." Corkhill, *The Complete Dictionary of Wood*, 501 (1979). Reference to the World Wide Web site of Anglo-

American suggests that the principal distinction between a shake and a shingle is that shakes have a "natural split face, and a sawn backside" while shingles are "sawn on both sides and produce a smooth finished look." Anglo-American Cedar Products Ltd., www.angloamerican.com/products.htm, visited Sept. 14, 2000.

A shingle, as defined in the EN's to heading 4418, is "wood sawn lengthwise which is generally thicker than 5mm at one end (the butt) but thinner than 5mm at the other end (the tip). It may have its edges resawn to be parallel; its butt may be resawn to be at right angles to its edges or to form a curve or other shape. One of its faces may be sanded from the butt to the tip or grooved along its length." *See also*, Corkhill, *The Complete Dictionary of Wood*, 504 (1979).

The boards that were the subject of HQ 082694 issued to Anglo-American in 1989 have not been sufficiently processed beyond the stage of material lumber. They are rectangular lumber boards sawn to size. They are not tapered to any degree, nor are they in a condition in which they may be deemed dedicated to use only as shakes or shingles. They do not have the approximate shape or outline of a shake or shingle and are more closely analogous to the examples of semi-manufactured items in the EN's than to the plastic bottle preform identified as the example of a blank. The "short boards" in issue are plain sawn wood suitable for multiple uses and not recognizable as one particular article of commerce. *See generally, Ludvig Svensson (US) v. United States*, 62 F. Supp. 2d 1171 (C.I.T.1999); *Doherty-Barrow of Texas, Inc. v. United States*, 3 C.I.T. 228 (1982); and *American Import Co. v. United States*, 26 C.C.P.A. 72 (1938).

The Customs Service is apprised of HQ Ruling Letter 083795 issued on May 26, 1989. HQ 083795 classified Red Cedar "short boards" in HTSUS subheading 4418.50.0040 as unfinished shakes and shingles. It is specifically noted that the articles in issue in that ruling letter, in the condition as imported, possessed the approximate shape or outline of a shingle. The sample was a tapered board measuring eighteen and one-fourth inches in length and ten and eleven-sixteenth inches in width. The tip of the board measured nine-thirty-seconds of an inch (7 mm) and the bottom or butt measured seven-eighths of an inch (22mm). HQ 083795 is, therefore, distinguishable from HQ 082694.

Holding:

Headquarters Ruling Letter 082694 has been reconsidered and it is the conclusion of the Customs Service that the merchandise was incorrectly classified. The correct classification of the Western Red Cedar boards or "short boards" in issue is 4407.10.0068, HTSUS.

The general column one duty rate is Free.

Headquarters Ruling Letter 082694 dated April 11, 1989, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)